

# The Connecticut General Assembly

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## Memorandum

**To:** Legislative Regulation Review Committee  
**From:** Legislative Commissioners' Office  
**Committee Meeting Date:** October 23, 2012

<b>Regulation No:</b>	2012-46
<b>Agency:</b>	Department of Education
<b>Subject Matter:</b>	Special Education
<b>Statutory Authority:</b> (copy attached)	10-76b

	<b>Yes or No</b>
<b>Mandatory</b>	Y
<b>Federal Requirement</b>	Y
<b>Permissive</b>	N

### For the Committee's Information:

The revisions made to the special education regulations in the proposed regulation use terminology that differs from that used in the special education laws in the general statutes. For example, the proposed regulation is substituting the term "child with a disability", for "child requiring special education and related services", whereas the general statutes still use the term "child requiring special education and related services" to describe the same child. This does not create a legal problem because federal law uses the term "child with a disability". Similarly, throughout the proposed regulation, the department proposes replacing "regular education" with "general education". The statutes governing special education in Connecticut refer to "regular education" whereas the federal law uses the term "general education". Another example is the deletion in the proposed regulation of the term

"exceptional child", which appears as a defined term in section 10-76a(3) of the general statutes.

### **Substantive Concerns:**

1. Throughout the proposed regulation references are made to "extended school day services" and "extended school year services". It is unclear what these terms mean and they should be defined for purposes of the regulation.
2. The proposed regulation amends the definition of "child requiring special education and related services" by indicating that this term will be substituted with "child with a disability" throughout the text of the regulations regarding special education. If the intent is to make the Connecticut regulations conform to federal law, then in section 10-76a-1 of the proposed regulation, the term "child requiring special education and related services" should be bracketed and "child with a disability" should be inserted for consistency and clarity. Throughout the proposed regulation there are some instances when the term "child requiring special education and related services" is not replaced with "child with a disability". Such references should be changed for consistency and clarity if it is the agency's intent to use the federal term.
3. The proposed regulation contains many references to "sections 10-76a to 10-76hh, inclusive, of the Connecticut General Statutes" and it is unclear whether the reference should be to "sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes" for accuracy.
4. On page 7, in section 10-76d-1, the term "preschool child requiring special education and related services" appears, however, this term is being deleted in section 10-76a-1 so it is unclear what this term means. The revisions to the definition of "a child requiring special education" now include preschool-age children (ages three to five, inclusive) so the agency should clarify this reference by using the defined term of a "child with a disability".
5. On page 7, in section 10-76d-1(a)(2), the terms "general education graduation exercise", "graduation exercises" and "high school graduation exercises" are all used. It is unclear whether they are all referring to the same event, or if elementary and middle school graduations are intended to be included. If it is intended to only refer to high school graduation, then a single term should be used for consistency and clarity. The term "graduation exercises" appears again in section 10-76d-17(a)(5) and should be consistent with the term used in 10-76d-1(a)(2).
6. On page 8, in section 10-76d-1(b), the proviso relating to the provision of special education and related services is confusing. If a gifted and talented child "meets the criteria for a child with a disability" then the provision of "all other special education and related services" would no longer be at the discretion of the board of education because a "child with a disability" is entitled to such services according to the definition in section 10-76a-1(3).

7. On page 12, some clarification is needed in section 10-76d-6 regarding the requirement that "children who are educated at home" be "located, identified and evaluated in accordance with the IDEA", but are "not considered parentally placed private school children for the purpose of receiving special education in accordance with the IDEA". As currently drafted, the two requirements appear contradictory, however, if the IDEA allows states the discretion of determining whether "children educated at home" are considered "parentally placed private school children" then the section should be redrafted to make this clear.

8. On page 13, in section 10-76d-7(b), the relationship of the notwithstanding provision to the rest of section 10-76d-7 is unclear. The use of "shall" in the notwithstanding provision requires the board of education to convene a PPT meeting for the purpose of determining if an evaluation is appropriate, whereas in that same subsection, there is a requirement that the board of education explore alternative procedures and programs *before* a child is referred to a planning and placement team. Additionally, in section 10-76d-7(a)(1), "Each board of education shall accept and process referrals for the initial evaluation of a child to determine if the child is a child with a disability". The requirement in section 10-76d-7(a)(1) and the notwithstanding provision in section 10-76d-7(b) appear to be requiring the same thing.

9. On page 14, the proposed revisions to section 10-76d-8 are unclear. The section needs to be redrafted to explain what "prior written notice" means, who provides it to whom and when it occurs. As currently drafted, the proposed regulation provides "prior written notice" at three separate times with various may and shalls.

10. On page 15, in section 10-76d-9(b), the term "child with a learning disability" is used. This term is not defined in the proposed regulation and deviates from the agency's use of the defined term "child with a disability" throughout the proposed regulation.

11. On page 16, in section 10-76d-9(b), the subsection is filled with terms and standards that are not defined and unclear ("achieve adequately", "state-approved grade-level standards", "severe discrepancy", "Intelligence Quotient-achievement discrepancy", "intelligence quotient tests", "comprehensive evaluation"). Additionally, the subsection begins with determining whether a child is a "child with a learning disability", then refers to a "comprehensive evaluation conducted to determine the child's eligibility for special education". If these are the same evaluations or determinations, the language should be consistent to avoid confusion.

12. On page 16, in section 10-76d-9(b)(1)(A), the proposed language is unclear. There appears to be two ways in which a child may not "achieve adequately" in the enumerated areas -the child's age and state-approved grade level standards. These two ways should be more clearly distinguished to make it easier to understand how they relate to achieving adequately "with learning experiences".

13. On page 16, section 10-76d-9(b)(4) requires the board of education to promptly request parental consent to evaluate a child to determine if such child requires special education or related services. This subdivision should be included in subsection (a) of said section because its subject matter relates to the requirement that a board conduct such evaluation

and it precedes chronologically the subject matter in subsection (b). Additionally, the clauses in this subdivision are unclear in how they are part of the condition relating to an extension of "timeframes described in section 10-76d-13".

14. On page 16, section 10-76d-9(c)(1) permits a board of education to identify up to ten per cent of "its total school population" as gifted and talented. It is unclear whether this means up to ten per cent of the student population at each school under the jurisdiction of the board of education, or up to ten per cent of its total student population for the district as a whole.

15. On page 17, in section 10-76d-11, the requirements for boards of education regarding how they are to develop, implement and revise individualized education programs is unclear. The proposed revisions mandate boards of education to develop, implement, review, maintain and evaluate IEPs based on "policies and procedures" they adopt that are "as determined by the State Department of Education". Then the proposed regulation states the "policies and procedures" that are "as determined" by the department are to be consistent with the IDEA and state law and regulations. This is essentially a mandate on the Department of Education. Finally, the proposed regulation then mandates boards of education to "develop, review and revise the IEP for each child with a disability" in accordance with the IDEA and state law and regulation. The requirements for boards of education in this section need to be clarified.

16. On page 18, in section 10-76d-11(a), "annual educational goals" is not defined and its meaning is unclear. Additionally, with the phrase "This shall include" it is unclear whether "This" refers to the "statement of short term instructional objective" or the "annual educational goals". The proposed regulation should be amended to state, "Such statement" or "Such annual educational goals", as appropriate, for clarity.

17. On page 20, in section 10-76d-12(g), the use of the phrase "A child with a disability over the age of eighteen" is problematic in that it would be applicable to only those children who are age nineteen or above, which seems to conflict with the rest of the section which refers to eighteen-year olds. If the agency intended to include eighteen-year olds, it should use "age of eighteen or over".

18. On page 20, in section 10-76d-12(g)(2), the proposed regulation adds a provision regarding the appointment of a surrogate parent pursuant to section 10-94(h) of the general statutes. Section 10-94 has been repealed and it appears that the agency may have meant to refer to section 10-94h of the general statutes, but said section is only applicable to children under the age of eighteen. This subsection of the proposed regulation is applicable to children who are over the age of eighteen, thus, the provisions of section 10-94h do not apply.

19. On page 20, in section 10-76d-12(g)(3), the phrase "with a bona fide interest in and knowledge of the child" is used to describe a person who may challenge a certification that such child is unable to provide informed consent or to make educational decisions for his or herself. This phrase is unclear and should be defined or further clarified to avoid ambiguity or confusion.

20. On page 21, in section 10-76d-14, the proposed regulation permits the extension of time for a trial placement for diagnostic purposes that is conducted as part of an initial evaluation. The language in the proposed regulation refers to a "forty school days duration" and a "60 day timeline" for such evaluation. The period of time needs to be consistent and "60" should be "sixty" for consistency with the existing regulation. Additionally, it is unclear who makes the decision for the extension of the time period for the trial placement for diagnostic purposes.

21. On page 25, in section 10-76d-17(a)(1), it is unclear whether the phrase "including a program operated by a private education special education program or regional education service center in a public school building" applies to "all other placement options" or a school operated "on behalf of a board of education".

22. On page 25, in section 10-76d-17(a)(3), the term "at no cost" is being deleted from the definitions in section 10-76a-1 of the proposed regulation, but it is left in this section and is no longer a defined term.

23. On page 25, in section 10-76d-17(a)(6), the phrase "out-of-state private facilities" is not being amended, however, throughout this section the agency is replacing "private facility" with "private special education program", and it is unclear whether this reference to "out-of-state private facilities" is intended to remain unchanged or whether it should be changed to "out-of-state private special education programs" for consistency.

24. On page 31, in section 10-76h-3(d), the proposed regulation says, "The request for a hearing shall be filed with the other party". As currently drafted, it is unclear who the "other party" is referring to. Section 10-76h-2 governs who may file a request for a hearing. This subsection should be redrafted to make it clear who receives a request for a hearing.

### Technical Corrections:

1. Throughout the proposed regulation, the introductory language should be "Section #### of the Regulations of Connecticut State Agencies is amended to read as follows:" for proper form.

2. Throughout the proposed regulation, the catchlines for each section of the regulations should be included and amended as necessary for proper form. For example, on page 1, before "As used in", "**Sec. 10-76a-1. General definitions**" should be inserted for proper form.

3. Throughout the proposed regulation, language that appears in bold in the official version of the Regulations of Connecticut State Agencies should be made bold for accuracy and proper form. For example, on page 9, in section 10-76d-2(a), "(a) Coordination of instruction." should be "(a) **Coordination of instruction.**" for accuracy and proper form.

4. Throughout the proposed regulation, references to "State Department of Education" should be "Department of Education" for accuracy. For example, on page 7 in section 10-76d-11, "State Department of Education" should be "Department of Education" for accuracy.
5. Throughout the proposed regulation, references to the "state board of education" should be "[state board of education] State Board of Education" for proper form. For example, on page 26, in section 10-76d-17(c), "by the state board of education." should be "by the [state board of education] State Board of Education." for accuracy; and "adopted by the state board of education," should be "adopted by the State Board of Education," for accuracy.
6. On page 1, in section 10-76a-1(1), "'Board of education or board'" should be "'Board of education" or "board"' for proper form.
7. On page 1, in section 10-76a-1(1), "[regional vocational-]the Connecticut technical high schools" should be "[regional vocational-technical schools] technical high school system" for proper form and accuracy; and "the unified school districts of the Department of Children and Families and Correction" should be "the unified school districts established pursuant to sections 17a-37, 17a-240 and 18-99a of the Connecticut General Statutes" for accuracy and clarity.
8. On page 2, in section 10-76a-1(5), "evaluation" should be deleted for clarity and proper form.
9. On page 2, in section 10-76a-1(8), "10-76d-11 of these regulations." should be "10-76d-11 of the Regulations of Connecticut State Agencies." for accuracy.
10. On page 2, in section 10-76a-1(9), "least restrictive environment as defined" should be "least restrictive environment as described" for accuracy.
11. On page 3 in section 10-76a-2(2), subdivisions (1) and (2) should be bracketed and replaced with "(A)" and "(B)" for proper form, and "these regulations" should be "sections 10-76a-1, 10-76a-2, 10-76b-1 to 10-76b-4, inclusive and 10-76d-1 to 10-76d-19, inclusive of the regulations of Connecticut State Agencies" for clarity.
12. On page 4, in section 10-76b-1, "[These] Sections 10-76a-1 to 10-76d-19, inclusive of the regulations of Connecticut State Agencies" should be "[These regulations] Sections 10-76a-1 to 10-76d-19, inclusive of the Regulations of Connecticut State Agencies" for accuracy and proper form.
13. On page 4, in section 10-76b-4(a), "regulations" should be "Regulations" for accuracy and proper form.
14. On page 6, in section 10-76b-8(h)(5), the proposed language in subdivision (5) needs to be revised to conform to the introductory language of subsection (h) for clarity and proper grammar because "Any room used for the seclusion of a person at risk shall: If the door or doors to a room used for seclusion are to be locked..." is not a sentence. Additionally, "State Fire Marshall's office" should be "State Fire Marshal's office" for accuracy. Finally,

the definition of "emergency" in the proposed language is the same as the existing language in the regulation and therefore, the brackets around the existing definition of "emergency" should be removed and the closing bracket moved to after "case of an emergency." and the underlined definition of "emergency" should be deleted for proper form.

15. On page 7, in section 10-76b-11, "shall provide a model incident report" should be "shall develop and make available a model incident report" for clarity.

16. On page 7, in section 10-76d-1, "a child who turns three during the summer" should be "a child whose third birthday occurs outside of the regular school year" for consistency and clarity.

17. On page 7, in section 10-76d-1(a)(2), references to "the child" should be replaced with "such child" for clarity and proper grammar. The phrase "in his or her educational career" should be "while such child is enrolled in high school" for clarity.

18. On page 7, in section 10-76d-1(a)(3), "its general education high school diploma" should be "a regular high school diploma" or "regular education diploma" to conform with section 10-76ff(b)(4) of the general statutes for consistency and accuracy. Additionally, the proposed language should be rewritten as follows: "Each board of education shall award a regular high school diploma to each child with a disability who (A) meets the requirements for graduation for such board, (B) is provided a free appropriate public education by such board, and (C) is enrolled in a program that does not award a diploma for purposes of high school graduation.", for clarity.

19. On page 8, in section 10-76d-1(b), "enrolled in kindergarten through grade twelve in such board of education's public schools" should be "enrolled in grades kindergarten to twelve, inclusive, in a public school under the jurisdiction of such board of education" for proper form.

20. On page 9, in section 10-76d-2, "and/or" should be "[and/or] or" for proper grammar, and on page 10 in subsection (f) of said section, "[combine] combines" should be "combine" because that language is being repealed by the proposed regulation.

21. On page 10, in section 10-76d-2(a), "special education instruction or related services" should be "special education or related services" for accuracy.

22. On page 10, in section 10-76d-2(a), "An aide works under the direct supervision of a teacher or related service personnel if (1) the teacher or related service personnel prepares the lessons and plans the instructional support activities the aide performs and evaluates the achievement of the child with whom the aides is working and (2) the aide works in close proximity and frequent proximity with the teacher or related service personnel." should be "An aide works under the direct supervision of a teacher or related service personnel if (1) the teacher or related service personnel prepares the lessons and plans the instructional support activities that such aide performs, (2) the teacher or related service personnel evaluates the achievement of the child with whom such aide is working and (3)

such aide works in close and frequent proximity with the teacher or related service personnel." for clarity and proper grammar.

23. On page 10, in section 10-76d-2(c), "may require the attendance of personnel at specific in-service training activities" should be "may require certain personnel to attend specific in-service training activities" for clarity and proper grammar.

24. On page 11, in section 10-76d-3(b), "are available in accordance with" should be "are available to each child with a disability in accordance with" and all subsequent references to "the child's" and "the child" should be "such child's" or "such child" for clarity and proper form. Additionally, "placement for" should be "the placement for" for clarity and proper grammar. Finally, "extended school year program" should be "extended school year services for such child." for consistency and clarity.

25. On page 11, in section 10-76d-4(b)(1), "and assistive technology devices secured with IDEA funds" should be "and assistive technology devices purchased with IDEA funds" for clarity and accuracy. Additionally, references to "or device" and "and devices" should be "or assistive technology device" and "and assistive technology devices" for consistency with the defined term.

26. On page 12, in section 10-76d-7(a)(1), "parents[;]" should be "parents<sub>2</sub> [;]", "permits [in order]" should be "permits<sub>2</sub> [in order]" and finally, "services]" should be "services.]" for proper form.

27. On page 12, in section 10-76d-7(a)(2), "general education" should be "regular education" for consistency; "The information shall identify" should be "Such information shall identify" for proper form; and "each school building for either parents or professional staff of the board to contact" should be "each school building that parents or professional staff of the board may contact" for proper form and grammar.

28. On page 12, in section 10-76d-7(a)(3), "referral form for a referral." should be "referral form for a referral for an initial evaluation to determine if a child is a child with a disability." for clarity.

29. On page 13, in section 10-76d-7(a)(3), "that the child be referred for an initial evaluation and this written concern must be provided to supervisory or administrative personnel of the board or the child's teacher. The board will accept a referral that uses terms which clearly indicate a concern that the child may be a child with a disability" should be "that such child be referred for an initial evaluation and such written concern shall be provided to supervisory or administrative personnel of the board or such child's teacher. The board shall accept a referral that uses terms that clearly indicate a concern that such child may be a child with a disability" for proper form and to comply with the committee's directive regarding mandates.

30. On page 14, in section 10-76d-8(b), "parental consent consistent with the requirements of the IDEA occurs" should be "parental consent, in accordance with the provisions of the IDEA, occurs" for proper form and "Parental failure to respond" should be "The failure of the parent to respond" for proper form and grammar.



31. On page 15, in section 10-76d-9(a), "The board shall conduct an initial evaluation or reevaluation consistent with the provisions of the IDEA. A parent's right to an independent evaluation shall be provided consistent with the IDEA." should be "The board shall conduct an initial evaluation or reevaluation to determine if a child qualifies as a child with a disability in accordance with the provisions of the IDEA. A parent shall be permitted to obtain an independent evaluation, in accordance with the provisions of the IDEA." for clarity, proper form and grammar.

32. On page 16, in section 10-76d-9(b)(1)(A)(viii), "solving." should be "solving." for proper form and grammar.

33. On page 16, in section 10-76d-9(b)(1)(C), "cultural factors, or environmental" should be "cultural factors, environmental" for proper grammar.

34. On page 16, in section 10-76d-9(b)(3), "the PPT must consider" should be "the PPT shall consider" in accordance with the committee's directive concerning mandates; the designators "(i)" and "(ii)" should be "(A)" and "(B)" for proper form; and "(i) Data that demonstrate that prior to, or as part of, the referral process, the child was provided with appropriate instruction in regular education settings, delivered by qualified personnel;" should be "(A) Data demonstrating that prior to, or as part of, the referral process, such child was provided appropriate instruction by qualified personnel in regular education settings." for clarity and proper form.

35. On page 16, in section 10-76d-9(b)(4) references to "must" should be "shall" in accordance with the committee's directive to agencies concerning mandates, "section 10-76d-13 unless" should be "section 10-76d-13 of the Regulations of Connecticut State Agencies, unless" for accuracy and proper form, and the designators "(i)" and "(ii)" should be "(A)" and "(B)" for proper form.

36. On page 16, section 10-76d-9(c)(2), "A board of education may individually evaluate a child who may be gifted or talented or may use group assessment and evaluation procedures." should be "A board of education may use individual evaluations or group assessment and evaluations to identify gifted and talented children, provided the board of education obtains parental consent in writing before a child is individually evaluated." for clarity; and on pages 16 to 17, "Parents shall be provided with written notice that a child" should be "The board of education shall provide parents with written notice that their child" for proper grammar and clarity.

37. On page 17, in section 10-76d-10, "shall [receive]" should be "[shall receive]", "be located" should be "are located" "ensure" should be "to ensure" and "for each such child" should be inserted after "implemented" for clarity and proper grammar.

38. On page 17, in section 10-76d-10(a), "section 10-76d-7 of these regulations." should be "section 10-76d-7 of the Regulations of Connecticut State Agencies." for accuracy and proper form.

39. On page 17, in section 10-76d-10(b), "Evaluation of children requiring special education." should be "Evaluation of [children requiring special education.] a child with a disability." for consistency.
40. On page 18, in section 10-76d-11(a)(2), "who shall implement the IEP" should be "who will be implementing the IEP" for clarity and proper grammar.
41. On pages 19 to 20, throughout section 10-76d-12, references to a child with a disability reaching the "age of majority" should be the "age of eighteen" for consistency and clarity.
42. On page 19, in section 10-76d-12(b), "both the child and the child's parent and (2) all other rights accorded to the parents under the IDEA and these regulations transfer to the child." should be "such child and the parents of such child, and (2) all other rights accorded to the parents of such child under the IDEA and sections x to x, inclusive of the Regulations of Connecticut State Agencies shall transfer to such child." for clarity and proper form and the bolding should be removed from "is" for proper form. (The x's should be replaced by the appropriate cite to the pertinent sections of the regulations by the agency.)
43. On page 19, in section 10-76d-12(c), "transfer to a child with a disability" should be "shall transfer to the child with a disability of such parents" for clarity and proper form.
44. On page 20, in section 10-76d-12(e), "A child with a disability may, in writing, notify the board that the parent continues to have the right to make educational decisions on behalf of the child notwithstanding the fact the child has turned eighteen years of age." should be "A child with a disability who has reached eighteen years of age may notify, in writing, the board of education that the parent of such child shall continue to have the right to make educational decisions on behalf of such child" and "provided from" should be "provided by" for clarity and proper form.
45. On page 20, in section 10-76d-12(f), "in accordance with any court" should be "by a court" for clarity and proper form.
46. On page 20, in section 10-76d-12(g), "must" and "will" should be "shall" in accordance with the committee's directive concerning mandates; in subdivision (1) the designators "(i)" to "(v)", inclusive, should be "(A)" to "(E)", inclusive, and in subdivision (2) the designators "(i)" to "(iii)", inclusive, should be "(A)" to "(C)", inclusive, for proper form; "by any court" should be "by a court" for proper grammar; all references to "the student" or "the student's" should be "such child" or "such child's" for consistency; references to "the child" or "the child's" should be "such child" or "such child's" for proper form and clarity; and "period of one year. However, the child or an adult on behalf of the child" should be "period of one year, except such child or an adult on behalf of such child" for proper form and clarity.
47. On page 21, in section 10-76d-14, throughout the section "diagnostic placement" should be "trial placement for diagnostic purposes" for consistency and all references to "diagnostic program" in the text of the existing regulation should be bracketed and "trial placement for diagnostic purposes" should be inserted after the closing bracket for

consistency; "special education or to develop or revise an" should be "special education and related services or to develop or revise the child's" for clarity and consistency and "current" should be deleted for accuracy.

48. On page 22, in section 10-76d-15(a)(1), "to a child enrolled in the public schools of such board" should be "to a child with a disability in a public school under the jurisdiction of such board" for clarity and consistency; "education and on a form provided by the board of education stating:" should be "education, on a form provided by such board, stating:" for clarity and proper form; "(B) the child is, therefore, unable to attend school due to a verified medical reason and the child's diagnosis with supporting documentation:" should be "(B) the child is unable to attend school due to a verified medical reason, (C) the child's diagnosis with supporting documentation," for clarity and proper form; and consequently subparagraph designators "(C)" and "(D)" should be "(D)" and "(E)" for proper form.

49. On page 22, in section 10-76d-15(a)(2), "in accordance with an IEP when the child is not able" should be "in accordance with the IEP of such child when such child is not able" for clarity and proper form; subparagraph designator "(A)" should be inserted before "from public school to a home" and subparagraph designator "(B)" should be inserted before "back to school" for clarity; and "\"Medically complex\" for purposes of this section means" should be "For purposes of this section, \"medically complex\" means" for proper form.

50. On page 23, in section 10-76d-15(c)(1), "Instruction for a child" should be "Instruction for a child with a disability" for accuracy.

51. On page 23, in section 10-76d-15(c)(2), "day of absence as long as the child" should be "day of absence, provided such child" for proper form.

52. On page 23, in section 10-76d-15(d), "instruction pending review of the documentation provided by the child's treating physician" should be "such instruction pending review of the written statement provided by the child's treating physician, pursuant to subsection (a) of this section," for clarity and proper form; "The parent shall be required to provide" should be "The parent of such child shall provide" for proper form and grammar; "board of education to speak with" should be "board of education to consult with" for consistency; "provided to the child for the child to attend" should be "provided to the child so the child can attend" for clarity; "the board may offer at its expense a review" should be "the board may offer, at the board's expense, a review" for clarity and proper form; "available for such evaluation, the board's obligation to provide homebound instruction ends and" should be "available for such review, the obligation of the board to provide homebound instruction shall end, and" for consistency and proper form; "the board must pursue" should be "the board shall pursue" in accordance with the committee's directive concerning mandates; "Section 10-76h-3" should be "section 10-76h-3" and "Section 10-76h-5" should be "section 10-76h-5" for proper form; and "as amended by Section 29" and "as amended by Section 31" should be deleted for proper form.

53. On page 23, in section 10-76d-15 [(d)] (e), "preschool children eligible for special education, for the" should be "preschool children with a disability, for the" for clarity and consistency with the defined term.

54. On page 23, in section 10-76d-15(e), the subsection designator "(e)" should be replaced with "(f)" for accuracy and proper form; on pages 23 to 24, throughout subsection (f) references to "the child's general education program" should be "the child's regular education program" for consistency; on page 24, "by the board or a magnet school or charter school for promotion" should be "by the board of education for such child or an interdistrict magnet school or charter school in which such student is enrolled for promotion" for accuracy and proper form; and "A magnet or charter school shall" should be "Such interdistrict magnet school or charter school shall" for proper form.

55. On page 24, in section 10-76d-15(f), the subsection designator "(f)" should be "(g)" for accuracy and proper form; and "shall provide as appropriate services including, but not limited to," should be "shall provide, as appropriate, services that may include, but need not be limited to," for proper grammar.

56. On page 25, in section 10-76d-17(a)(1), "regulations] consistent with" should be "regulations] that are consistent with" for proper form; and "regional education service center" should be "regional educational service center" for accuracy.

57. On page 25, in section 10-76d-17(a)(2), "shall be maintained in the private [facility] special education program;" should be "shall be maintained [in] by the staff administering the private [facility] special education program;" for clarity and proper form.

58. On page 25, in section 10-76d-17(a)(5), "child to so participate if the PPT determines it is appropriate" should be "child to participate in such activities if the PPT determines that it is appropriate" for clarity and proper form.

59. On page 26, in section 10-76d-17(b), "child's education except in those cases where a child" should be "child's education, except when a child" for clarity and proper form.

60. On page 26, in section 10-76d-17(c)(3), "continued placement [in accordance with sections 10-76-11 and 10-76d-12 of these regulations]." should be "continued placement, [in accordance with sections 10-76-11 and 10-76d-12 of these regulations.]" for proper form and "either participates in each such meeting or, if the child's parent and board of education consent to the teacher being excused, submits to the board of education within a reasonable time prior to the meeting for use at the meeting, written input into the development of the child's individualized education program;" should be "(A) participates in each such meeting, or (B) if the child's parent and the sending board of education consent to the teacher being excused from such meeting, submits written input regarding the development of the child's individualized education program to the sending board of education within a reasonable time prior to the meeting so such written input can be discussed at such meeting;" for clarity and proper form.

61. On page 27, in section 10-76d-17(c)(10), "permit board of education personnel to visit" should be "permit personnel of the sending board of education to visit" for clarity and proper grammar; and references to "students" should be "children" for consistency.

62. On page 27, in section 10-76d-17(c)(11), "in PPT meetings;" should be "in PPT meetings for their children;" for clarity.

63. On page 27, in section 10-76d-17(e)(3), "status of a private [facility] special education program within the following school year [for three consecutive years;] Thereafter," should be "status of a private [facility for three consecutive years; thereafter] special education program before the end of the following school year. Thereafter," for proper form.

64. On page 28, in section 10-76d-18(a)(1), "request within ten days of such request [, or within" should be "request [within] not later than ten days of such request\_ [, or within" for proper form; "process proceeding]." should be "process proceeding.]" for proper form; and "such request within [five school] ten days" should be "such request [within five school] not later than ten days" for proper form.

65. On page 29, in section 10-76d-19(c), "department of motor vehicles" should be "[department of motor vehicles] Department of Motor Vehicles" for accuracy.

66. On page 29, in section 10-76d-19(e), "if the hearing officer finds" should be "who finds" for proper form and clarity.

67. On page 30, in section 10-76h-1(i), "the state vocational-technical school system" should be "the [state vocational-technical] technical high school system" for accuracy.

68. On page 30, in section 10-76h-3(a), "said [commissioner] Commissioner," should be "said commissioner," for proper form.

69. Section 10-76h-1 does not define "IDEA" for purposes of the sections of the regulation beginning on page 30. Throughout sections 10-76h-4, 10-76h-7, 10-76h-10, 10-76h-15 and 10-76h-16 the agency is attempting to substitute "IDEA" for the cite to the actual act, but either the agency needs to add a definition of "IDEA" to section 10-76h-1 or else leave the existing cites to the act. For example, on page 32, in section 10-76h-5(c), "Part B of the [Individuals with Disabilities Education Act, 20 USC 1400, et. seq.] IDEA." should be "Part B of the Individuals with Disabilities Education Act, 20 USC 1400, et. seq." for accuracy and proper form.

70. On page 31, in section 10-76h-3(d), "Families or the Commissioner's designee for any child committed to or in the custody of said Commissioner." should be "Families, or said commissioner's designee, for any child committed to or in the custody of said commissioner." for proper form.

71. On page 31, in section 10-76h-4(a), "This timeline does not apply to a parent if the parent was prevented from filing a request for hearing due to specific misrepresentations by the public agency that it had resolved the problem forming the basis of the request for hearing or the public agency's withholding of information from the parent that was required to be provided to the parent under Part B of the IDEA." should be "Such two-year limitation shall not apply to a parent who was prevented from filing a request for hearing due to (1) specific misrepresentations made by the public agency indicating that the public agency had resolved the problem forming the basis of the request for hearing, or (2) the public agency's withholding of information from the parent that was required to be

provided to the parent under Part B of the Individuals with Disabilities Education Act, 20 USC 1400, et. seq., as amended from time to time." for consistency, accuracy and proper form.

72. On page 32, in section 10-76h-5(a), "reached agreement." should be "reached an agreement." for proper grammar.

73. On page 33, in section 10-76h-6(h)(6)(E), "and the hearing officer agree." should be "and the advisory opinion hearing officer agree." for consistency and accuracy.

74. On page 34, in section 10-76h-6(h)(8), "advisory opinion[s]." should be "advisory [opinions] opinion." for proper form.

75. On page 34, in section 10-76h-7(c), "of the hearing including the number" should be "of the hearing, including the number" for clarity and proper form; "completed within [45 days]" should be "completed [within 45 days]" for proper form; and "unit] the forty-five day timeline under Part B of the IDEA" should be "unit] not later than forty-five days, in accordance with the provisions of Part B of the Individuals with Disabilities Education Act, 20 USC 1400, et. seq., as amended from time to time." for proper form and accuracy.

76. On page 35, in section 10-76h-8(c), "Except as provided in subdivisions (1), (2) and (4) of subsection (f) of this section, [Within] within" should be "[Within] Except as provided in subdivisions (1), (2) and (4) of subsection (f) of this section, not later than" for proper form.

**Recommendation:**

<p>Approval in whole with technical corrections with deletions with substitute pages Disapproval in whole or in part <b>X</b> Rejection without prejudice</p>
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**Reviewed by:** Christopher Cordima / Shannon McCarthy

**Date:** October 11, 2012

**Sec. 10-76b. State supervision of special education programs and services.**

**Regulations. Coordinating agency.** (a) The State Board of Education shall provide for the development and supervision of the educational programs and services for children requiring special education and may regulate curriculum, conditions of instruction, including the use of physical restraint and seclusion pursuant to chapter 814e, physical facilities and equipment, class composition and size, admission of students, and the requirements respecting necessary special services and instruction to be provided by local and regional boards of education. The State Board of Education shall adopt regulations, in accordance with the provisions of chapter 54, concerning the use of physical restraint and seclusion pursuant to chapter 814e. The educational aspects of all programs and instructional facilities in any day or residential child-caring agency or school which provides training for children requiring special education and which receives funding from the state under the provisions of sections 10-76a to 10-76g, inclusive, shall be subject to the approval and supervision of the commissioner in accordance with regulations adopted by the State Board of Education concerning requirements for such programs and accommodations.

(b) The commissioner shall designate by regulation, subject to the approval of the State Board of Education, the procedures which shall be used to identify exceptional children.

(c) Said board shall be the agency for cooperation and consultation with federal agencies, other state agencies and private bodies on matters of public school education of children requiring special education, provided the full responsibilities for other aspects of the care of such children shall be reserved to such other agencies.